



State of Vermont

LAND USE PERMIT

CASE NO: 3W1117

Moon Time, LLC
Chelsey Ring
248 College Street
Burlington, VT 05401

LAWS/REGULATIONS INVOLVED

10 V.S.A. §§ 6001 - 6093 (Act 250)

The District 3 Environmental Commission hereby issues Land Use Permit 3W111, pursuant to the authority vested in it by 10 V.S.A. §§ 6001-6093. This permit applies to the lands identified in Book 213, Page 280, of the land records of the Town of Hartland, Vermont, as the subject of a deed to Chelsey Jo Ring, the Permittee.

This permit specifically authorizes the Permittee to operate a Hiker's Bed & Breakfast for 16 people, consisting of: the construction of two tree house platforms below the tree canopy (4 people); the use of the existing residence (4 people); the previous conversion of an existing barn to a bunkhouse for up to 8 people; the construction of a multi-purpose building also known as the lodge (no bedrooms) for a total capacity of 16 guests at the facility; and the construction of a parking lot for up to 8 vehicles. Events and workshops will be hosted on site and will be holistic and sustainable in nature (e.g. yoga retreats and trainings, and workshops/classes for writing, food preparation, composting). There shall be a maximum of 16 guests and 5 dog guests at any time on the premises. There shall be no commercial outdoor weddings and no outdoor amplified sound without amending this permit.

The project is located at 184 Hartland Hill Road in Hartland, Vermont.

Jurisdiction attaches because construction of improvements for commercial purpose on more than one acre in Hartland triggers Act 250. 10 V.S.A. § 6001(3)(A).

The Permittee and its assigns and successors in interest, are obligated by this permit to complete, operate and maintain the project as approved by the District 3 Environmental Commission (the "Commission") in accordance with the following conditions.

1. The project shall be completed, operated and maintained in accordance with the findings of fact and conclusions of law and order #3W1117; the conditions of this permit; and the permit application, plans, and exhibits on file with the Commission, and other material representations.

The approved plans are:

"Act 250 Plan," dated Dec. 6, 2019 (Exhibit 003);

"Erosion Control Plan," dated Dec. 6, 2019 (Exhibit 011);

"Criteria 1B, Disturbed Area, Impervious Area," dated Dec. 6, 2019 (Exhibit 017);

"Drive Plan – Profile," dated Dec. 6, 2019, last revised March 13, 2020 (Exhibit 029b);

Sheet S-1.1 – “Partial Site Plan,” except the access road in the area of the Class 2 Wetland, Dated Dec. 11, 2019, last revised March 6, 2020 (Exhibit 029c);

“Driveway Widening Plan – Section,” dated March 15, 2020 (Exhibit 035);

2. The Permittee shall comply with all of the conditions of the Wastewater System and Potable Water Supply Permit #WW-3-2359-1 (the WW permit) issued on December 19, 2019 by the Agency of Natural Resources (ANR), Drinking Water and Groundwater Protection Division (Exhibit 039). Any nonmaterial changes to the WW permit shall be automatically incorporated herein upon issuance by the ANR.
3. The Permittee shall comply with all of the conditions of the Notice of Authorization Under Vermont Construction General Permit 3-9020 to Discharge Stormwater, Permit #8922-9020 (the CGP), issued on March 20, 2020, by the ANR Watershed Management Division (Exhibit 040). Any nonmaterial changes to the CGP shall be automatically incorporated herein upon issuance by the ANR.
4. Representatives of the State of Vermont shall have access to the property covered by this permit, at reasonable times, for the purpose of ascertaining compliance with Vermont environmental and health statutes and regulations and with this permit.
5. A copy of this permit and plans shall be on the site at all times throughout the construction process.
6. No change shall be made to the design, operation or use of this project without a permit amendment issued by the Commission or a jurisdictional opinion from the District Coordinator that a permit is not required.
7. Pursuant to 10 V.S.A. § 8005(c), the Commission may at any time require that the permit holder file an affidavit certifying that the project is in compliance with the terms of this permit.
8. The conditions of this permit and the land uses permitted herein shall run with the land and are binding upon and enforceable against the Permittee and its successors and assigns.
9. The Permittee shall apply and receive amended approval from the District Commission prior to the change in the use of the buildings which involves the storage or handling of any regulated substances or the generation of hazardous wastes.
10. No floor drains shall be installed without first obtaining a permit or submitting other necessary documentation, as required by the Vermont Department of Environmental Conservation.
11. The Permittee and all subsequent owners or lessees shall install and maintain only low-flow plumbing fixtures in any buildings. Any failed water conservation measures shall be promptly replaced with products of equal or better performance.
12. The Permittees shall comply with Exhibits 001 (Schedule B of the Application), 011, and 040 for erosion prevention and sediment control. The Permittee shall prevent the transport of any sediment beyond that area necessary for construction approved herein. All erosion prevention and sediment control devices shall be periodically cleaned, replaced and maintained until vegetation is permanently established on all slopes and disturbed areas.
13. In addition to conformance with all erosion prevention and sediment control conditions, the Permittee shall not cause, permit or allow the discharge of waste material into any surface waters. Compliance with the requirements of this condition does not absolve the Permittee

- from compliance with 10 V.S.A. (§§ 1250-1284) Chapter 47, Vermont's Water Pollution Control Law.
14. Farming is permitted on lands exempt from amendment jurisdiction pursuant to 10 V.S.A. § 6081(s).
 15. Any extracted stumps shall be disposed of on-site above the seasonal high-water table and not in any wetland, or at a state-certified stump and inert waste disposal facility, so as to prevent groundwater pollution.
 16. The hours of construction shall be limited to between 8:00 a.m. and 4:00 p.m., Monday through Friday. There shall be no construction on National holidays. There shall be no burning of construction or forest debris.
 17. The Permittee shall implement and enforce the Etiquette Code (Code) for all occasions on the Project site and inform all guests and event/class attendees of the Code. The Code includes, at a minimum, the following:
 - a. Quiet hours shall be from 10:00 p.m. to 7:30 a.m. shall be enforced. These quiet hours apply to all occasions and for all guests and class attendees.
 - b. Walking trails shall be clearly marked to prevent guests from trespassing on adjoining properties. Trail markings shall be maintained. Guests and dogs shall stay off neighboring land.
 - c. There shall be no more than five guest dogs on the property at any one time.
 - d. Any guest dog shall sleep indoors in the same room as the guest.
 - e. The Permittee shall provide a fenced-in area for dogs. If guest dogs are not in the fenced-in area, they must be kept on leash and with their owners at all times.
 - f. Fireworks, of any size, shall be prohibited on the property.
 - g. The Permittee shall provide a current phone number or other way of communicating with management and/or the landowner to all neighbors who request this information so that any disturbance or non-compliance with the Code be promptly addressed by the management. Currently, that contact number is for Chelsey Ring at 802-369-9007. Changes in contact number will be provided to the neighbors within one week of the change.
 18. There shall be a maximum of 16 people on site at any time, not counting employees.
 19. Any campfire will need a burn permit from the Town of Hartland.
 20. Prior to implementing any silvicultural treatment of the forest (i.e., thinning, timber harvesting), the Permittee shall submit a forest management plan, prepared by a registered Vermont forester, to the Commission for review and approval. The plan shall, at a minimum, meet the requirements for eligibility in Vermont's Use Value Appraisal Program.
 21. Prior to commencing construction on the Project, the Permittee shall have a Wetlands Expert delineate the Class 2 wetlands (wetland project #2019-689) in the area of the driveway to avoid encroachment into the wetland and the wetland buffer (see Exhibits 016, 029, 0355 and 036).
 22. Except for the purpose of the Permittee's personal wedding, this project is not approved for commercial weddings or large events. There shall be no commercial weddings and no outdoor amplified sound without amending this permit.

23. The installation of exterior light fixtures is limited to those approved in Exhibits 001 and 015. All exterior lighting shall be installed or shielded in such a manner as to conceal light sources and reflector surfaces from view beyond the perimeter of the area to be illuminated.
24. The Permittee shall provide window coverings for the second-floor windows on the side of the multi-purpose building that faces the Thompson residence. The window coverings shall be deployed if the lights are "on" in the building at night. If the Thompsons, or current occupants of the Thompson residence, no longer see the lights from the multi-purpose building, this condition may be revised.
25. Pursuant to 30 V.S.A. § 53, the energy design and construction shall comply with Vermont's Commercial Building Energy Standards (CBES) and the CBES Stretch Guidelines in accordance with the NRB Criterion 9(F) Procedure effective at the time of construction. (More information on this update can be found at http://publicservice.vermont.gov/energy_efficiency/cbes, <http://nrb.vermont.gov/sites/nrb/files/documents/9fprocedure.pdf> and <http://nrb.vermont.gov/sites/nrb/files/documents/cbesstretch.pdf>).
26. The Permittee, upon completion of the construction of each commercial building and prior to use or occupancy, shall submit to the District Commission a copy of the certification submitted to the Public Service Department as described under 30 V.S.A. § 53(d).
27. The Permittee shall reference the requirements and conditions imposed by Land Use Permit #3W1117 in all deeds of conveyance and leases.
28. Pursuant to 10 V.S.A. § 6090(b)(1), this permit is hereby issued for an indefinite term, as long as there is compliance with the conditions herein. Notwithstanding any other provision herein, this permit shall expire three years from the date of issuance if the Permittees have not commenced construction and made substantial progress toward completion within the three-year period in accordance with 10 V.S.A. § 6091(b).
29. All site work and construction shall be completed in accordance with the approved plans by **October 15, 2023**, unless an extension of this date is approved in writing by the Commission. Such requests to extend must be filed prior to the deadline and approval may be granted without a public hearing.
30. The Permittee shall file a Certificate of Actual Construction Costs, on forms available from the Natural Resources Board, pursuant to 10 V.S.A. § 6083a(g) within one month after construction has been substantially completed or two years from the date of this permit, whichever shall occur first. Application for extension of time for good cause shown may be made to the District Commission. If actual construction costs exceed the original estimate, a supplemental fee based on actual construction costs must be paid at the time of certification in accordance with the fee schedule in effect at the time of application. Upon request, the Permittee shall provide all documents or other information necessary to substantiate the certification. Pursuant to existing law, failure to file the certification or pay any supplemental fee due constitutes grounds for permit revocation. The certificate of actual construction costs and any supplemental fee (by check payable to the "State of Vermont") shall be mailed to: Natural Resources Board, 10 Baldwin Street, Montpelier, VT 05633-3201; Attention: Certification.

Failure to comply with any condition herein may be grounds for permit revocation pursuant to 10 V.S.A. sec. 6027(g).

Dated at Springfield, Vermont, this 5th day of June 2020.

By 

Tim Taylor, Chair
District 3 Environmental Commission

Members participating in this decision: Roderick J. Maclay and Suzanne Butterfield

Any party may file a motion to alter with the District Commission within 15 days from the date of this decision, pursuant to Act 250 Rule 31(A).

Any appeal of this decision must be filed with the Superior Court, Environmental Division within 30 days of the date the decision was issued, pursuant to 10 V.S.A. Chapter 220. The Notice of Appeal must comply with the Vermont Rules for Environmental Court Proceedings. The appellant must file with the Notice of Appeal the relevant entry fee required by 32 V.S.A. § 1431. The appellant must also serve a copy of the Notice of Appeal on the Natural Resources Board, 10 Baldwin Street, Montpelier, VT 05633-3201, and on other parties in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings. Decisions on minor applications may be appealed only if a hearing was held by the district commission. Please note that there are certain limitations on the right to appeal, including appeals from Administrative Amendments and interlocutory appeals. See 10 V.S.A. § 8504(k), 3 V.S.A. § 815, and Vermont Rule of Appellate Procedure 5. For additional information on filing appeals, see the Court's website at: <http://www.vermontjudiciary.org/GTC/environmental/default.aspx> or call (802) 951-1740. The Court's mailing address is: Vermont Superior Court, Environmental Division, 32 Cherry Street, 2nd Floor, Suite 303, Burlington, VT 05401.

E-Notification CERTIFICATE OF SERVICE #3W1117

I hereby certify that I, the undersigned, sent a copy of the foregoing Land Use Permit and Findings of Fact, Conclusions of Law on June 5, 2020, by U.S. Mail, postage prepaid, to the individuals without email addresses, and by electronic mail to the following with email addresses. All email replies should be sent to NRB.Act250Springfield@vermont.gov. **Note: Any recipient may change its preferred method of receiving notices and other documents by contacting the NRB District Office staff at the mailing address or email below. If you have elected to receive notices and other documents by email, it is your responsibility to notify the District Office of any email address changes.**

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**State of Vermont
NATURAL RESOURCES BOARD
DISTRICT 3 ENVIRONMENTAL COMMISSION
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Springfield, VT 05156-3168**

RE: Moon Time, LLC
Chelsey Ring
184 Hartland Hill Road
Woodstock, VT 05091

Application #**3W1117**
**Findings of Fact, Conclusions of
Law, and Order**
10 V.S.A. §§ 6001-6093 (Act 250)

I. INTRODUCTION

On January 6, 2020, application #3W1117 was filed by Moon Time, LLC, 248 College Street, Burlington, Vermont 05401, and Margery duMond and Janet LaVoy Salstrom, 4287 N. Bridgewater Road, Woodstock, Vermont 05091, for a project generally described as operating a hiker's bed and breakfast for up to 16 people, consisting of two tree houses to be constructed; using an existing house and barn converted to a bunk house; and construction of a multi-purpose building (no bedrooms) for activities and events such as yoga retreats and trainings, writing workshops, canning, pickling, composting and other educational workshops. There will be no commercial weddings and no outdoor amplified sound. The project is located at 184 Hartland Hill Road in Hartland, Vermont. The tract of land consists of 40 acres.

On March 16, 2020, Chelsey Jo Ring acquired legal interest in fee simple described in a deed recorded on March 16, 2020, in Book 213, Page 280 of the land records of Hartland, Vermont (see Exhibit 038).

The Commission held a hearing on this application on February 27, 2020. The Commission also conducted a site visit on February 27, 2020. At the end of the hearing, the Commission recessed the proceeding pending the submittal of additional information. The Commission adjourned the hearing on June 4, 2020 after receipt of the additional information, an opportunity for parties to respond to that information, and the completion of Commission deliberations.

As set forth below, the Commission finds that the Project complies with 10 V.S.A § 6086(a) (Act 250).

II. JURISDICTION

Jurisdiction attaches because construction of improvements for commercial purpose on more than one acre in Hartland constitutes 'development' pursuant to 10 V.S.A. § 6001(3)(A) and therefore, requires an Act 250 permit.

III. PARTY STATUS AND FRIENDS OF THE COMMISSION

A. Parties by Right

Parties by right to this application pursuant to 10 V.S.A § 6085(c)(1)(A)-(D) are:

1. The Applicant, by Dan Richardson, Esq., Ron Shems, Esq., Chelsey Ring, Jon Seering, and Chris Leister, P.E.
2. The Agency of Natural Resources (ANR) through an Entry of Appearance by Karin McNeill, Regulatory Policy Analyst, dated February 4, 2020 (Exhibit 023).
3. The municipality of Hartland by David Ormiston, Town Manager.
4. The Hartland Planning Commission by, Jay Boeri, Charles Jeffries, and Robert R. Bibby.

5. The Two Rivers-Ottauquechee Regional Commission, by Kevin Geiger.

B. Interested Parties

Any person who has a particularized interest protected by Act 250 that may be affected by an act or decision of the Commission is also entitled to party status. 10 V.S.A § 6085(c)(1)(E).

i. Preliminary Party Status Determinations

Pursuant to Act 250 Rule 14(E), the District Commission made preliminary determinations concerning party status at the commencement of the hearing on this application. The following persons requested party status pursuant to 10 V.S.A § 6085(c)(1)(E), and were either admitted as parties or denied party status, as indicated below:

1. Deborah and Robert Thompson, adjoining landowners, reside at 194 Hartland Hill Road, Hartland, and requested party status under Criteria 8 Aesthetics, Noise and Nuisance and 10 Conformance with the Town Plan. The Thompsons house is the closest neighbor to the proposed multi-purpose building. The Applicants objected to granting party status to the neighbors under Criterion 10, noting that the Planning Commission is charged with reviewing and interpreting the Town Plan. The Commission granted party status under Criteria 8 and 10.
2. Phil Steed, adjoining landowner, resides at 17 Old Birch Road, Hartland, and requested party status under Criteria 8 Aesthetics, Noise and Nuisance and 10 Conformance with the Town Plan. The Applicants objected to granting party status to the neighbors under Criterion 10, noting that the Planning Commission is charged with reviewing and interpreting the Town Plan. Mr. Steed verbally withdrew his request for party status under Criterion 10. The Commission granted party status under Criterion 8.
3. 20 Gray Road, LLC, (20GR) represented by member, Nate Stearns, submitted comments and a request for party status through a letter dated February 3, 2020 (Exhibit 022). 20GR is an adjoining landowner with a house that is uphill from the proposed project site. 20 GR requested party status under Criteria 8 Aesthetics, Noise and Nuisance and 10 Conformance with the Town Plan. The Commission granted preliminary party status under Criteria 8 and 10.

ii. Final Party Status Determinations

Prior to the close of hearings, the District Commission re-examined the preliminary party status determinations in accordance with 10 V.S.A § 6086(c)(6) and Act 250 Rule 14(E) and found no reason to change its preliminary determinations.

C. Friends of the Commission

The District Commission allowed the following nonparties to participate as Friends of the Commission pursuant to 10 V.S.A § 6085(c)(5). Unless otherwise noted below, each was granted the rights of full participation allowed under 10 V.S.A § 6085(c)(5):

1. Patricia Richardson and family have operated a farm in the area for many years. She resides at 112 Hartland Hill Road in Hartland (post office is Woodstock). The Commission granted her Friend of the Commission status because her knowledge of the area may materially assist in the review of the application.

IV. OFFICIAL NOTICE

Under 3 V.S.A. § 810(4) of the Administrative Procedure Act (“APA”), notice may be taken of judicially cognizable facts in contested cases. See 10 V.S.A. § 6007(c) and 3 V.S.A. § 801(b)(2). Under § 810(1) of the APA, “[t]he rules of evidence as applied in civil cases shall be followed” in contested cases. Under the Vermont Rules of Evidence, “(a) judicially noticed fact must be one not subject to reasonable dispute in that it is ... (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” V.R.E. 201(b); See *In re: Handy*, 144 Vt.601, 613 (1984).

The Commission may take official notice of a judicially cognizable fact whether requested or not and may do so at any stage of the proceeding. See V.R.E. 201(c) and (f). Under 3 V.S.A. § 809(g), the Commission may make findings of fact based on matters officially noticed. A party is entitled, upon timely request, to an opportunity to be heard as to the propriety of taking official notice and the tenor of the matter noticed. See V.R.E. 201(e).

Accordingly, official notice is hereby taken of the Hartland Town Plan and the Hartland Burn Ordinance subject to the filing of an objection on or before thirty days from the date of this decision pursuant to Act 250 Rule 6.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The District Commission initiated the review process on this application as a Minor application under Act 250 Rule 51 on January 2, 2020. The Commission distributed a notice and proposed permit establishing a deadline of February 5, 2020 by which parties, or the Commission on its own motion, could request a hearing on this matter. The Commission received timely communications from Mr. Stearns, an adjoining landowner, and the Hartland Planning Commission expressing concerns related to Criteria 8 Aesthetics and 10 Conformance to the Local Plan. The deadline was extended to February 7, 2020 to allow the Planning Commission sufficient time to meet and prepare comments to submit to the Commission. On February 10, 2020 the Commission, on its own motion, determined that a public hearing would be held to address Criteria 8 Aesthetics and 10 as it relates to the Hartland Town Plan. A Notice of Hearing was distributed on February 10, 2020. Pursuant to Act 250 Board Rule 51(F), the Commission need only prepare Findings of Fact and Conclusions of Law on those criteria or sub-criteria at issue during the hearing. The following Findings of Fact are limited to Criteria 8 and 10.

The application shall serve as the Findings of Fact on the criteria not addressed at the hearing.

The findings of fact are based on the application, Exhibits 001 - 040, and other evidence in the record.

Under Act 250, projects are reviewed for compliance with the ten criteria of Act 250, 10 V.S.A § 6086(a)(1)-(10). Before granting a permit, the District Commission must find that the Project complies with these criteria and, therefore, is not detrimental to the public health, safety or general welfare. The burden of proof under Criteria 1 through 4 and 9 and 10 is on the applicant, and on the opponent under Criteria 5 through 8, and 9A if the municipality does not have a duly adopted capital improvement program.

Criterion 8 - Aesthetics, Historic Sites and Rare and Irreplaceable Natural Areas:

FINDINGS OF FACT: Aesthetics, Scenic or Natural Beauty

1. The Project site is a 40-acre tract of land with an approximate 500-foot driveway off the Hartland Hill Road, a graveled town road, that accesses the existing house, barn and

- garage. A proposed multi-purpose building (also referred to as the “lodge”) will be built on the edge of the open area off to the left (approx. 175’ northwest) of the existing barn that has been converted into a bunkhouse. The proposed tree houses will be constructed off to the right (north and east of the barn), tucked into the edge of the woods. Exhibits 001, 010, 025, 029c, and Testimony.
2. The Project tract is surrounded by other rural residential parcels with woodlands and open fields. Very little clearing will be required. The proposed construction will be in areas that are mostly already cleared of trees. The wastewater disposal area and construction access to the proposed construction areas will be in forested area that was logged about 15 years ago. The buildings have been designed to blend in with the existing landscape and tree cover, avoiding fragmenting open space. Exhibits 001 and 025.
 3. The project is designed to maintain the rural aesthetics, promote conservation of natural resources, and will allow the Applicants to farm on the land. The buildings have been designed to blend in with the landscape and do not intrude on or fragment open space. Exhibits 001 and 025.
 4. Of the 25 acres of mapped productive forest soils on this parcel, the proposed Project will occupy approximately 1.75 acres of productive forest soils. Exhibits 001 and 019.
 5. The parcel of land contains soils that are classified by the Natural Resources Conservation Service (NRCS) as Primary Agricultural Soils (PAS). There will be no reduction in PAS from this project. The Project will be on soils that are not classified as PAS. Exhibits 001, 012, 013 and 019.
 6. The Applicants will be focusing their business on hiking throughout the year and also will be encouraging winter skiing. Exhibit 025.
 7. The multi-purpose building will be approximately 550 feet from the Thompson’s back deck separated by woods. The Thompsons will hear noises associated with the construction of the building and will see and hear activity at the lodge after construction. The noise level and view of the project may be reduced when leaves are on the trees. Exhibits 032, 037 and Testimony.
 8. The Thompson’s daughter has “complex medical needs” and campfires could exacerbate her condition. The Thompson’s outdoor activities and dinners on their deck would be compromised by campfires burning next door at the lodge area. Exhibit 032.
 9. The hours of construction will be Monday through Friday, 8:00 a.m. to 4:00 p.m. Construction is anticipated to last for approximately ten months. There will be no burning of forest or construction debris. Exhibit 001.
 10. The building style will be rustic structures with unfinished, hemlock siding, metal clad windows, and blue/gray standing seam galvanized roofing. Exterior lighting will consist of recessed LED fixtures in porch ceilings, LED full cutoff wall mounted fixtures, and 21” LED path lights with full cutoff, controlled by manual switches and motion sensors. Exhibits 001, 015, 029c, 029d, 029g and Testimony.
 11. The two, hexagon-shaped, tree houses will be 28-feet, 5-inches from ground level to the top of the roof. Exterior stairs will lead up to the elevated deck and one-bedroom units. There will be no kitchen in the tree house units. The “tree” houses will be on columnar stilts, not attached to any actual existing trees and will be below the tree canopy height. No trees will

- be cut to construct these “tree” houses or the foot paths between the units and the lodge. Small brush may be removed. Exhibits 001, 014, 025, 029c, 029g, 029f and Testimony.
12. The lodge will be a two-story structure (24-feet, 4-inches from the ground to the top of the roof) occupying an approximate 125-foot diameter area. Approximately four to six mature trees and many seedlings will need to be removed. Exhibits 29c, 029d and 029f.
 13. As outlined on Exhibit 029f, some mature trees may be removed in the areas for the proposed mound disposal area above the proposed driveway, the parking and infiltration basins, and the construction access road. The area was logged approximately 15 years ago. Exhibits 029c and 029f.
 14. The existing access drive off the Hartland Hill Road will not be widened in the area of the mapped Class 2 wetland and wetland buffer. There will be no new curb cuts. The lodge and tree houses will not be visible from Hartland Hill Road. The Applicants will be using existing forest roads for constructing their project. Exhibits 001, 035, 036 and Testimony.
 15. The Applicant met with the neighbors in November and agreed to implement and enforce the “Etiquette Code” (Code) that includes: informing all guests of the Code; marking the walking trails to prevent offsite trespass; allowing only five guest dogs at any time; requiring all guest dogs to sleep indoors in the same room as the guest; providing a fenced-in area for dogs and if not in the fenced area, dogs must be kept on leash and with their owners at all times; enforcing quiet hours from 10:00 p.m. to 7:30 a.m.; prohibiting fireworks of any kind on the property; providing a current phone number or other way of communicating with the management and/or the landowner to all neighbors so they can contact the manager/owners to respond promptly to any disturbance, nuisance or non-compliance with the Code; and allowing a maximum of 16 guests on the property for all occasions, including events and workshops. Exhibits 022, 024 and Testimony.
 16. The sign will be mounted on the side of the bunk house and will not be lit. Exhibits 001 and 020.
 17. The Thompsons are concerned that an existing campfire ring may be used for guests. Smoke from the campfire could adversely impact their ability to enjoy their home and could adversely impact their daughter’s medical condition. Exhibit 032.
 18. The Applicant will have its services listed in *The A. T. Guide*, a handbook (the “AWOL” list) for hiking the Appalachian Trail (AT) <https://www.theatguide.com/> that provides hikers with a map of the trail and lists where to find services such as laundromat, water source, groceries, veterinarians, medical facilities, and lodging along the trail. The Applicant will shuttle hikers to and from hiking trails and to services they may need while hiking. The AT is approximately seven miles from the Project site. Exhibit 001 and Testimony.
 19. Events and workshops will be hosted on the premises and will be holistic and sustainable in nature (e.g. yoga retreats and trainings, meditation classes, writing workshops, pickling, canning and composting workshops, etc.). Occupation will be limited to 16 people and 8 vehicles, inclusive of bed and breakfast guests, and events/workshops. Workshop and event participants will also comply with the Etiquette Code. Exhibit 001 and Testimony.
 20. The parking lot for up to eight vehicles will be constructed south of the existing garage. Exhibits 011 and 029b.
 21. The existing pool adjacent to the residence will not be used by guests. The Applicant will be living in the residence. Testimony.

22. There is no formal landscaping plan, but landscaping will be limited and consistent with local vegetation. Dumpsters and fuel tanks will not be visible off the property. Exhibit 001.
23. "Scenic Policies," identified in the Hartland Town Plan, adopted May 15, 2017 include the following:
 1. Open space and natural resources which relate to the historical, cultural, and scenic character of the Town should be preserved.
 2. Growth or activities that would contribute to sprawling development along major roads and highways is discouraged.
 3. The scenic value of ridgelines, hilltops, and hillsides should be maintained.

Official Notice, Hartland Town Plan, page 31.

24. According to Hartland's Burn Ordinance, "campfires require a permit, provided conditions are safe for open burning." "Campfire" means a small fire for cooking, two feet or less in diameter, will contained by non-flammable material and burning only natural wood." Official Notice, [Hartland Burn Ordinance](#).
25. There are no historic sites or rare and irreplaceable natural areas which will be affected by this Project. The existing stone wall will be breached in a couple of areas to allow a driveway to serve the complex. Exhibits 001, 011 and Testimony.
26. There are no rare and irreplaceable natural areas. Exhibit 001.

CONCLUSIONS OF LAW

Prior to granting a permit, the Commission must find that the subdivision or development under Criterion 8 "will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas." 10 V.S.A § 6086(a)(8). This Project involves concerns under Criterion 8 related to aesthetics and noise.

CONCLUSIONS OF LAW: Aesthetics and Scenic or Natural Beauty, including Noise

The Commission uses a two-part test to determine whether a Project meets the portion of Criterion 8 relating to aesthetics and natural and scenic beauty. First, it determines whether the Project will have an adverse effect. Second, it determines whether the adverse effect, if any, is undue. *In re Rinkers, Inc.*, No. 302-12-08 Vtec, Decision and Order at 12 (Vt. Env'tl. Ct. May 17, 2010)(citations omitted); see also, *Re: Quechee Lakes Corporation, #3W0411-EB and #3W0439-EB*, Findings of Fact, Conclusions of Law, and Order at 18-20 (Vt. Env'tl. Bd. Nov. 4, 1985); *In re Halnon*, 174 Vt. 514 (mem.)(applying Quechee test in Section 248 context).

The burden of proof under Criterion 8 is on any party opposing the Project, 10 V.S.A § 6088(b), but the applicant must provide sufficient information for the Commission to make affirmative findings. *In re Rinkers*, No. 302-12-08 Vtec, Decision and Order at 10-11 (Vt. Env'tl. Ct. May 17, 2010)(citing *Re: Susan Dollenmaier, #3W0125-5-EB*, Findings, Conclusions and Order at 8 (Vt Env'tl. Bd. Feb. 7, 2005); *In re Eastview at Middlebury, Inc.*, No. 256-11-06 Vtec, slip op. at 5 (Vt. Env'tl. Ct. Feb. 15, 2008), aff'd, 2009 VT 98. "Either party's burden, however, may be satisfied by evidence introduced by any of the parties or witnesses . . ." *In re McShinsky*, 153 Vt. 586, 589 (1990) (quoting *In re Quechee Lakes Corp.*, 154 Vt. 543, 553-54 (1990)).

1. Adverse Effect

To determine whether the Project will have an adverse aesthetic effect, the Commission looks to whether the Project will "fit" the context in which it will be located. In making this evaluation, the Commission examines a number of specific factors, including: the nature of the project's surroundings; the compatibility of the project's design with those surroundings; the suitability of the colors and materials selected for the project; the locations from which the project can be viewed; and the potential impact of the project on open space. *Quechee Lakes Corp et al. #3W0411-EB and #3W0439-EB Findings of Fact, Conclusions of Law and Order at 18 (Vt. Env'tl. Bd., Nov. 4, 1985)(cited in Rinkers, No. 302-12-08 Vtec, Decision and Order at 12-13).*

The Project site is in a rural area characterized by residential homes with open land, farmland and wooded areas off Hartland Hill Road, a gravel road. Although few mature trees will be removed, the lodge may be seen by some of the neighbors, particularly during leafless seasons. Noise from activities at the lodge and from guest's dogs may be adverse to neighbors and smoke from campfires could impact the Thompson's enjoyment of their home and the health of their daughter. For this reason, the Project has an adverse effect. Accordingly, the Commission will determine whether the adverse impact is undue.

2. Undue Adverse Effect

An adverse aesthetic impact is undue if any of the following is true: (1) the Project violates a clear, written community standard intended to preserve the aesthetics or scenic beauty of the area; (2) the Project offends the sensibilities of the average person, or is offensive or shocking because it is out of character with its surroundings or significantly diminishes the scenic qualities of the area; or (3) the Applicants failed to take generally available mitigating steps which a reasonable person would take to improve the harmony of the Project with its surroundings. *In re Rinkers, 302-12-08 Vtec, Decision and Order at 15 (May 22, 2010)(citing In re: Times & Seasons, LLC, 2008 VT 7, ¶ 8; In re McShinsky, 153 Vt. at 592).*

(a) Clear, Written Community Standard

In evaluating whether a project violates a clear written community standard, the Commission looks to town plans, open land studies, and other municipal documents to discern whether a clear, written community standard exists to be applied in review of aesthetic impacts of a project. *Hannaford Brothers Co. and Southland Enterprises, Inc., #4C0238-5-EB, Findings of Fact, Conclusions of Law, and Order at 18 (Vt. Env'tl. Bd., April 4, 2002).* A clear, written community standard must be intended to preserve the aesthetics or scenic beauty of the area where the project is located. *Re: Green Meadows Center, LLC, The Community Alliance and Southeastern Vermont Community Action, #2WO694-I-EB, Findings of Fact, Conclusions of Law, and Order at 36 (Vt. Env'tl. Bd., Dec. 21, 2000).*

A plan which states "consideration should be made . . ." is not a clear, written community standard. *Barre Granite Quarries, LLC and William and Margaret Dyott, #7C1079(Revised)-EB, Findings of Fact, Conclusions of Law, and Order at 81 (Vt. Env'tl. Bd. Dec. 8, 2000).* The proposed Project does not violate any of the Scenic Policies of the Town Plan as noted in finding 23. Also, the policies are not clear community standards relevant to the proposed Project's impacts on aesthetics. The Burn Ordinance does not prohibit campfires, but requires that a burn permit be obtained from the Town.

Therefore, the proposed Project does not violate a clear community standard.

(b) Offensive or Shocking Character

Criterion 8 "was not intended to prevent all change to the landscape of Vermont or to guarantee that the view a person sees from their property will remain the same forever." *Re: Okemo Mountain, Inc.* #2S0351-S-EB Findings of Fact, Conclusions of Law, and Order (Dec. 18, 1986). Criterion 8 was intended to ensure that as development occurs, reasonable consideration will be given to visual impacts on neighboring landowners, the local community, and on the special scenic resources of Vermont. *Rinkers*, No. 302-12-08 Vtec, Decision and Order at 11-12; *Horizon Development Corp.*, #4C0841-EB, Findings of Fact, Conclusions of Law, and Order (Vt. Env'tl. Bd. Aug. 21, 1992).

In consideration of the Project's rural setting, the 40-acre tract of land with the proposed structures designed to fit in with the existing buildings and area, and relationship to neighboring properties as detailed in the Findings above, we find that the Project may be a nuisance to some neighbors, during construction and sporadically when the hiking bed and breakfast and lodge are in full operation, however, it will not be shocking or offensive to the average person. Given all of these considerations and conditions, we find that the Project is not offensive or shocking.

(c) Generally Available Mitigating steps

The question under this factor of the aesthetics analysis is whether the Applicant has "failed to take generally available mitigating steps that a reasonable person would take to improve the harmony of the proposed project with its surroundings." *In re Times & Seasons*, 2008 VT 7, ¶ 8. If a project does have an adverse aesthetic effect, the applicant must "take generally available mitigating steps to reduce the negative aesthetic impact of a particular project," otherwise, "[f]ailure to take advantage of available alternatives may render an aesthetic impact unduly adverse." *In re Stokes Communications Corp.*, 164 Vt. 30, 39 (1995)(quoted in *In re Rinkers*, 302-12-08 Vtec, Decision and Order at 19 (May 22, 2010). A generally available mitigating step "is one that is reasonably feasible and does not frustrate [either] the project's purpose or Act 250's goals."

To mitigate the aesthetic impacts of the Project, the Applicant has designed the Project to visually fit in with the area. The new buildings will be rustic and will fit in with the existing buildings on the parcel. The new structures (lodge and tree houses) will not be visible from Hartland Hill Road. The new structures will be located in open areas along the edge of the woods. The tree house units will be in a wooded area. The new septic system and new access road will be in mostly-open areas, created by previous logging. Very few mature trees will be removed for the Project. The access road off Hartland Hill Road is an existing road cut and the access road will not be widened in the area of the Class 2 wetland. The maximum number of guests and/or users of the lodge will be limited to 16 on any day and there will never be more than five dog guests. Implementing the Etiquette Code will mitigate noise from activities at the lodge and from guests and their dogs. The hours of construction will be limited to Monday through Friday, 8:00 a.m. to 4:00 p.m. The Etiquette Code includes: quiet hours between 10:00 p.m. and 7:30 a.m.; rules to control guest dogs at all times; walking trails will be clearly marked to keep guests from trespassing on neighbors' properties; prohibition of fireworks; and providing a way for neighbors to contact the owners/managers in order to address problems directly.

(d) Conclusion

Based on the above and with the addition of permit conditions, the Commission concludes that the Project will not have an undue adverse effect on the aesthetics or natural and scenic beauty of the area.

SUMMARY CONCLUSIONS OF LAW: Aesthetics, Historic Sites and Rare and Irreplaceable Natural Areas

The Commission concludes that the Project will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, or rare and irreplaceable natural areas. The project complies with Criterion 8.

Criterion 10 – Town and Regional Plans:

FINDINGS OF FACT

27. Previous relevant findings are incorporated herein.
28. The municipal plan that applies to this application is the Hartland Town Plan (Plan), adopted on May 15, 2017. The Project is located in a Rural Area as designated by the Plan and the Future Land Use Map. Exhibit 001 and Official Notice of the Town Plan.
29. No local permit is required. Hartland has not adopted permanent zoning bylaws. Exhibit 001.
30. The Hartland Planning Commission (HPC) voted unanimously that the proposed project does not conform to the Hartland Town Plan. Their conclusion relied on the introductory paragraph under *Rural Area* under the *Future Land Use Areas* section of the Plan. Exhibits 026, 028 and Plan page 19.
31. The introductory paragraph of the *Rural Area* under the Plan's section on *Future Land Use Areas* section states:

Maintaining the Town's natural resource base, agricultural economy, and forest industry are primary objectives of the Town Plan to be implemented through the Rural Area. In these area, only low density residential development with home occupations will meet these objectives.

Exhibits 026 and 028 and Plan, page 19.

32. The Plan states:

Land Use Goals, and Siting Policies and Recommendations / Siting Policies:

6. If and when different land use is considered for open spaces, especially for fields, planners shall consider ways of preserving or maximizing agricultural, forestry and scenic potential. For example, dwelling, access roads, and utilities should be placed on the perimeter of the open space. (Plan, page 11).

8. As development occurs in the rural areas, it must not only respect the physical limitations imposed by topography and soil characteristics, but shall also be in harmony with the existing landscape and adjoining land uses. Future development shall be guided by and related to the existing pattern of settlement. (Plan, page 11).

9. Major considerations in determining lot sizes and density shall include:

- the existing pattern of development,
- the provisions and maintenance of roads, and
- the proper installation and operation of sewage treatment systems.

(Plan, page 11)

Future Land Use Areas section (Plan, page 12) Chapter 1: Land Use

Rural Area Policies: more about density than use

1. Typically no greater than one dwelling unit per ten acres is an appropriate density in this District. However for preexisting lots greater than 10 acres and less than 20 acres with adequate soils, one subdivision should be allowed. (Plan, page 19)
4. Larger projects within the Rural District, including subdivisions of more than 5 lots, shall be configured such that at least 80% of land is left in contiguous undeveloped acreage. Locally enforceable permit conditions, conservation easements, or similar mechanisms on the undeveloped portion of the lot shall be required sufficient to maintain this land as open space. (Plan, page 20)
5. Any development in the District on previously undeveloped hilltops or extending more than 800 feet into previously undeveloped lots, merits additional review and greater restrictions. Mandatory provisions shall include that no structures may break the natural tree canopy or disturb the silhouette of high points of land (as seen from public highways), and buildings not screened by vegetation will reduce their visibility through muted colors and less reflective materials. (Plan, page 20)

Chapter 9: Economic Development

Economic Development Goal, Policy, and Recommendations (Plan, page 92)

Economic Development Policy:

1. This Plan supports the establishment of businesses throughout Town that fit the definition of a home occupation. (Plan, page 92)

Economic Development Recommendations:

1. Home occupations, home businesses, and small enterprises, as defined above, are allowed in all districts except the river district unless they detract from the current character of the area in which they operate. These businesses should be reviewed periodically to determine if they have grown into commercial enterprises requiring additional approvals. (Plan, page 92)

Businesses and Enterprises section of (Plan, page 92)

The following small business types are exhibited in Hartland, and their existence plays an important role to the community members who live in the Town. These businesses are nonretail, typically small in size, and, depending on the classification of the business, predominantly residential in nature.

Home occupation: a business use that is conducted within less than 50% of the floor area of a dwelling and/or accessory building, which is clearly secondary to the dwelling's use as a living quarters, and which is customary in residential areas and does not have an undue adverse effect on the character of the neighborhood. This type of business can only have two other on-site employees; it must have at least two public parking spaces; and it cannot see permanent outdoor storage.

Examples: home office, antique shop, repair shop, hairdresser, catering service, and studio

Home business: a commercial activity that has no more than five total onsite employees; it can have no more than five additional employees that can routinely visit onsite; and it may have outdoor storage of materials.

Examples: contractor services, auto repair, and lumber or firewood operations

33. Shall/Must – mandatory, required. Definition in the Plan, page 108.
34. The Applicant will reside on the premises and there will be no more than five onsite employees. Exhibit 025.
35. Hartland has not adopted permanent zoning and/or subdivision bylaws. Plan, page 94.
36. The regional plan that applies to this application is the Two Rivers-Ottauquechee Regional Plan adopted on July 26, 2017. Exhibit 001.
37. The Project will not have substantial regional impacts. Testimony.
38. The Town Plan does not conflict with the Regional Plan. Testimony.
39. The Town does not have a capital program. Exhibit 025.

Conclusions of Law

Before issuing a permit, the District Commission must find that the Project is in conformance with any duly adopted local or regional plan or capital program. 10 V.S.A § 6086(a)(10).

The Commission has reviewed the Hartland Town Plan and has determined that the provisions in question are not sufficiently specific. See, *Re: The Mirkwood Group #1R0780-EB*, Findings of Fact, Conclusions of Law, and Order at 19 (Vt. Envtl. Bd. August 19, 1996). There are no zoning bylaws to resolve ambiguities. See *In re Frank A. Molgano Jr.* 163 Vt. 25 (1994).

The Town Plan does not conflict with the Regional Plan, and the Project will not have a substantial regional impact, therefore, the Commission only needs to consider compliance of the proposed Project with the Town Plan. *In re: Green Peak Estates*, 154 Vt. 363, 368 (1990); 24 V.S.A. §4348(h)(2); *Re: Times and Seasons, LLC and Hubert K. Benoit, #3W0839-2-EB(Altered)*, Findings of Fact, Conclusions of Law, and Order at 67 n. 13 (Nov. 4, 2005), appeal dktd. (VT Supreme Court) (but finding no conflict); *Re: John J. Flynn Estate and Keystone Development Corp. #4C0790-2-EB*, Findings of Fact, Conclusions of Law, and Order at 30 (May 4, 2004).

According to the Town Plan, “maintaining the Town’s natural resource base, agricultural economy and forest industry are primary objectives . . . to be implemented through the Rural Area.” The Plan further states that, “in these areas, only low density residential development with home occupations will meet these objectives.”

The Plan identifies three land uses in the Rural Area as being primary objectives, however, these primary goals are not mandatory, nor are they exclusionary. There can be other primary goals, and other secondary goals in the Rural Area. Mandatory language would use the word “shall” or “must,” as defined by the Plan itself. Mandatory language is not used in the introductory paragraph to the Rural Area section of the Plan.

Elsewhere in the Town Plan, in the chapter on Economic Development, the Plan states that “home occupations, home businesses, and small enterprises . . . are allowed in all districts except the river district unless they detract from the current character of the area in which they operate.” This proposed Project fits the Town’s definition of a “home business.” The Project is set back from

Hartland Hill Road, allows only 16 guests and 5 guest dogs per day/night, will be implementing an Etiquette Code that includes enforcing quiet hours between 10:00 p.m. and 7:30 a.m., the parcel will continue to have forestland and open land with the buildings tucked into the woods or along the edge of the open area, and the owners will occupy the residence on site. A home business such as this does not "detract from the current character of the area."

There is no clear, written community standard in the Town Plan that prohibits this proposed Project from locating and operating in this Rural Area.

The Project complies with Criterion 10.

VI. SUMMARY CONCLUSION OF LAW

Based upon the foregoing Findings of Fact, the Commission concludes that the Project, if completed and maintained as represented in the application and other representations of the Applicant, and in accordance with the findings and conclusions of this decision and the conditions of Land Use Permit #3W1117, will comply with the Act 250 criteria. 10 V.S.A § 6086(a).

VII. ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, Land Use Permit #3W1117 is hereby issued.

Dated at Springfield, Vermont, this 5th day of June 2020.

By 

Tim Taylor, Chair
District #3 Environmental Commission

Commissioners participating in this decision: Roderick J. Maclay and Suzanne Butterfield

Any party may file a motion to alter with the District Commission within 15 days from the date of this decision, pursuant to Act 250 Rule 31(A).

Any appeal of this decision must be filed with the Superior Court, Environmental Division within 30 days of the date the decision was issued, pursuant to 10 V.S.A. Chapter 220. The Notice of Appeal must comply with the Vermont Rules for Environmental Court Proceedings. The appellant must file with the Notice of Appeal the relevant entry fee required by 32 V.S.A. § 1431. The appellant must also serve a copy of the Notice of Appeal on the Natural Resources Board, 10 Baldwin Street, Montpelier, VT 05633-3201, and on other parties in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings. Decisions on minor applications may be appealed only if a hearing was held by the district commission. Please note that there are certain limitations on the right to appeal, including appeals from Administrative Amendments and interlocutory appeals. See 10 V.S.A. § 8504(k), 3 V.S.A. § 815, and Vermont Rule of Appellate Procedure 5. For additional information on filing appeals, see the Court's website at: <http://www.vermontjudiciary.org/GTC/environmental/default.aspx> or call (802) 951-1740. The Court's mailing address is: Vermont Superior Court, Environmental Division, 32 Cherry Street, 2nd Floor, Suite 303, Burlington, VT 05401.